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HOUSE BILL NO. 437

INTRODUCED BY K. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL DRUG LAWS; REMOVING ITEMS RELATED TO TESTING DRUGS FROM THE LIST OF PARAPHERNALIA; REMOVING THE LIMITATION ON THE TYPE OF TETRAHYDROCANNABINOLS THAT MUST BE PRESENT TO CONSTITUTE DRIVING UNDER THE INFLUENCE; AMENDING SECTIONS 45-10-103 AND 61-8-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-10-103, MCA, is amended to read:

"45-10-103. Criminal possession of drug paraphernalia. Except as provided in Title 16, chapter 12, or 50-32-609, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, ~~test~~, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

Section 2. Section 61-8-1002, MCA, is amended to read:

"61-8-1002. Driving under influence. (1) A person commits the offense of driving under the influence if the person drives or is in actual physical control of:

(a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while under the influence of alcohol, any drug, or a combination of alcohol and any drug;

(b) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.08 or

1 more;

2 (c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown
3 by analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

4 (d) a noncommercial vehicle or commercial motor vehicle within this state while the person's ~~delta-~~
5 ~~9-tetrahydrocannabinol~~-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the
6 person's blood or other bodily substance, is 5 ng/ml or more; or

7 (e) a vehicle within this state when the person is under 21 years of age at the time of the offense
8 while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily
9 substance, is 0.02 or more.

10 (2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
11 been committed by any person driving or in actual physical control of a vehicle while under the influence of
12 alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the
13 person's blood, breath, or other bodily substance drawn or taken within a reasonable time after the alleged act,
14 gives rise to the following inferences:

15 (a) if there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the
16 person was not under the influence of alcohol;

17 (b) if there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact
18 may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact
19 may be considered with other competent evidence in determining the guilt or innocence of the person; and

20 (c) if there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the
21 person was under the influence of alcohol. The inference is rebuttable.

22 (3) The provisions of subsection (2) do not limit the introduction of any other competent evidence
23 bearing on the issue of whether the person was under the influence of alcohol, drugs, or a combination of
24 alcohol and drugs.

25 (4) Each municipality in this state is given authority to enact this section, with the word "state"
26 changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance
27 and the imposition of the fines and penalties provided in the ordinance.

28 (5) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

1 (6) When the same acts may establish the commission of an offense under subsection (1), a
2 person charged with the conduct may be prosecuted for a violation of another relevant subsection under
3 subsection (1). However, the person may be convicted of only one offense under this section or of a similar
4 offense under previous laws of this state."

5

6 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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